

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman; and
Mark Acton

Competitive Product Prices
Priority Mail
Priority Mail Contract 68

Docket No. MC2014-6

Competitive Product Prices
Priority Mail Contract 68 (MC2014-6)
Negotiated Service Agreement

Docket No. CP2014-7

ORDER ADDING PRIORITY MAIL CONTRACT 68 TO THE
COMPETITIVE PRODUCT LIST

(Issued December 2, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 68 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 68 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 19, 2013 (Request).

II. BACKGROUND

On November 19, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 68 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying this contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, proposed changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On November 21, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1887, Notice and Order Concerning the Addition of Priority Mail Contract 68 to the Competitive Product List, November 21, 2013.

III. COMMENTS

The Public Representative filed comments on November 26, 2013.⁵ No other interested person submitted comments.

Based on a review of the contract, the Statement of Supporting Justification, and the financial data and the model filed under seal, the Public Representative concludes that Priority Mail Contract 68 should be categorized as a competitive product and added to the competitive product list. PR Comments at 2.

Based on the financial model filed by the Postal Service, the Public Representative states that the contract, which is set to expire on February 1, 2014, should meet the requirements of 39 U.S.C. § 3633(a) during the first contract year. *Id.* at 2-3. However, the Public Representative is concerned about the contract's ability to cover its costs in subsequent years, should it be renewed by mutual agreement in the future. *Id.* at 3; see also *id.* Attachment B at 2. She notes that no annual adjustment provision is included in the contract and therefore it is unclear whether the contract will meet the requirements of 39 U.S.C. § 3633(a) if extended after the first anniversary. PR Comments at 3. She recommends that the Commission request that the Postal Service provide a revision of contract terms with clarification of prices that will apply after the first anniversary of the effective date. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 68 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector

⁵ Public Representative Comments on Postal Service Request to Add Priority Mail Contract 68 to Competitive Product List, November 26, 2013 (PR Comments).

enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the market for expedited shipping is highly competitive and thus prevents the Postal Service from significantly increasing rates or degrading service without potentially losing volume. This is borne out by the availability of other providers. Further, there is no evidence of an adverse impact on small business concerns. For these reasons, the Commission finds that the instant contract is appropriately classified as a competitive product and added to the competitive product list.

Cost considerations. Because Priority Mail Contract 68 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. Based on review of the

financial spreadsheets, the rates during the first year of the contract cover attributable costs.

The contract is set to expire February 1, 2014, but may, among other things, be extended for up to two 90-day periods. Request, Attachment B at 2. The Public Representative expresses concern that the contract omits any reference to prices should it be extended beyond the first anniversary of the effective date. PR Comments at 3. Given the short duration of the contract, this concern appears to be misplaced. Even assuming two 90-day extensions, the contract would terminate well before the anniversary date. If the contract is superseded, a possibility under section III of the contract, the Postal Service would make an appropriate filing accompanied by the required supporting data. See 39 C.F.R. part 3015, and 39 C.F.R. part 3020.

Other considerations. By its terms, the contract becomes effective one business day after the date that the Commission issues all necessary regulatory approvals. *Id.* As noted, the contract is scheduled to expire February 1, 2014, unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party or it is renewed by mutual agreement. Request, Attachment B at 2.

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the contract expiring. *Id.*⁶ The Commission finds the two potential 90-day extension periods are reasonable because the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

⁶ As the Commission noted in Order No. 1773, at 3, the Postal Service clarified that identical language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within a least seven (7) days of the contract's expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013; see *also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 68 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 68 (MC2014-6 and CP2014-7) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2014-6 and CP2014-7. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 68

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